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International Covenant on Civil and Political Rights

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Human Rights Committee

Ninety-fifth session

Summary record (partial)* of the 2611th meeting

Held at Headquarters, New York, on Tuesday, 24 March 2009, at 3 p.m.

Chairperson: Mr. Iwasawa

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Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of Australia (*continued*)

* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of Australia (*continued*) (CCPR/C/AUS/5; CCPR/C/AUS/Q/5 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Australia took places at the Committee table.*

2. **The Chairperson** invited further queries from the Committee on questions 13 to 24 on the list of issues (CCPR/C/AUS/Q/5).

3. **Mr. Salvioli**, referring to question 16, said that the system of investigating, trying and providing compensation for wrongful imprisonment was not satisfactory. The concept of reparation was broader than mere economic compensation.

4. The State party's reservation to article 14, paragraph 6 seemed to refer to the legal basis for compensation. There was no incompatibility between providing compensation and the principles of international law. Any breach of international law resulting in damage generated compensation. The State's written answer to question 16 referred to the Commonwealth Ombudsman and to various human rights institutions, but those bodies could only make recommendations on reparations; they could not take decisions.

5. Police brutality complaints had been filed in virtually all the states and territories of Australia. They were usually resolved by bodies within the police force, and the police were rarely condemned or convicted. The State must develop a transparent, independent and efficient mechanism for handling complaints of police brutality and eradicating it. Information was requested on whether such a mechanism would be set up.

6. The State's answer to question 17 made clear its intention to comply with article 14 and indicated that there should be no explicit reservations thereto. Nor should there be implicit reservations, as those did not exist in international law. Reservations were formulated and construed in a restrictive fashion, in keeping with the principle of *effet utile*, especially in regard to international human rights treaties.

7. Paragraph 133 of the written replies (CCPR/C/AUS/Q/5/Add.1) stated that the courts could advise an individual regarding the consequences of using uncleared legal representation and recommend that the defendant engage a legal representative who had clearance. In the same context, paragraph 134 stated that uncleared legal representatives risked not having access to national security information relevant to the proceedings against their clients. That raised the questions of how it was possible to prepare an adequate defence, if an individual was practically compelled to change counsel, and how that was compatible with the principle of free choice of counsel, as stated in article 14.

8. Access to mental health care for detainees with mental illness was a matter of concern raised by many Australian non-governmental organizations. Degrading treatment, including segregation, might run counter to the provisions of the Covenant. Over the last 15 years, the states and territories had had policies of indefinite detention for those requesting political asylum. The Committee wished to know whether changes had already been made to immigration legislation to eliminate indefinite detainment.

9. The reopening of detention centres on Christmas Island was cause for concern. In particular, there was one new detention centre which appeared to resemble a maximum security prison.

10. **Mr. O'Flaherty** asked what the completion date would be for incorporation of non-refoulement obligations under the Covenant and the Convention Against Torture into the visa process.

11. Paragraph 157 of the replies stated that the Department of Immigration and Citizenship was consulting with stakeholders, including experts in refugee law. He would welcome an assurance that experts on the Covenant and the Convention Against Torture and experts from the Office of the United Nations High Commissioner for Refugees (UNHCR) were also being consulted.

12. The list of issues should have cited article 20 of the Covenant. That had been omitted through an oversight.

13. There was no federal religious vilification law, despite various failed legislative attempts. Only three states had such laws, and they engaged only with the public sphere. There appeared to be a legislative gap. It

should be pointed out that there was no intent to criminalize thought. References to "thought" in that context were misleading. Nor was the issue one of adopting a law on defamation of religion. However, certain extreme forms of expression should be criminalized, and articles 19 and 20 should be enforced.

14. The reservation to article 20 was interestingly worded, stating simply that the State party reserved the right not to introduce new legislation. The reservation had been entered 29 years ago. In the light of all the changes that had occurred in the world since then, that very dated reservation should be revisited. He hoped that the State would withdraw the reservation or exercise the right, retained under the reservation, to introduce new legislation to ensure that article 20 was adequately reflected in domestic law.

15. In paragraph 167 of its replies, the State had said that previous recommendations of the Human Rights and Equal Opportunity Commission on religious discrimination and freedom of belief would be revisited. It was not clear whether that meant that the Commission would change its position regarding criminalization at the federal level of discrimination and vilification on the basis of religion. He requested further information, as the Committee had no information before it suggesting that such criminalization might occur.

16. **Mr. Rivas Posada** noted with surprise and dissatisfaction that the State party's understanding of the reporting procedure was not consistent with established rules and long-standing practice not only of the Human Rights Committee, but of other treaty bodies as well. The various treaty bodies had achieved a consensus regarding streamlining and harmonization of reports to prevent repetition, inclusion of irrelevant information and excessive detail. The Committee had always been clear about how it carried out its work and met its obligations. The text of the Covenant needed to be taken into account, but so did tradition and long-standing practice in the work of the Committee. The Committee was interested not only in human rights protection, but also in progress in States' action to bolster respect for human rights. Obstacles which might have prevented a State party from fully complying with the conclusions and observations of the Committee must also be covered. The work of the Committee involved cooperation with States, not confrontation, in order to achieve progress towards comprehensive compliance with human rights obligations. In view of that, the Committee must be confident that it had the information necessary to make its observations and recommendations.

17. The State party had said orally and in writing that the report was experimental in nature. It was not a successful experiment, and there were disgruntled feelings in the Committee as a result. A display of goodwill by the State party required an overhaul of how the report was presented. If the Committee's opinions and conclusions were not taken into account, that would be tantamount to the Committee accepting reports which were parodies or caricatures.

18. **Sir Nigel Rodley** noted that the reply to question 13 included an assurance that immigration detention was used only as a last resort for the shortest practicable period, although legislation for mandatory detention remained in place. However, non-governmental organizations had said that that policy might not have trickled down: in practice, there were cases where, following health, security and identity checks, asylum-seekers were not released until removal from Australia or issuance of a permanent visa.

19. While fewer people were being held, and for shorter periods, months rather than years, detention was still arbitrary. Information received stated that as of September 2008, 281 people had been in immigration detention, with 109 of them in custody for 12 months or more, 69 in custody for 18 months or more and 42 in custody for two years or more. Detainees were still unable to challenge their detention in court. Information on how the policy was being implemented would be appreciated.

20. There were allegations that a young woman with a valid visa with all health and security checks in order had had her bags searched and her diary read; although she posed no threat to the community, she had been detained and then released after three months. Another case involved a report of three young Africans with valid visas, who had sought asylum before clearing immigration: for that reason their visas had been cancelled and they had been taken into detention. Also, five unaccompanied minors had been held for five weeks in a closed detention facility on Christmas Island. Children were not supposed to be detained, except as a very last resort, even for health, security

and identity checks. It would be helpful to know to what extent such cases reflected a policy weakness.

21. Under the Australian Security, Intelligence and Organization Act as amended, it appeared that people could be detained for up to seven days without coming before a judge, could be questioned in the absence of a lawyer and could be prohibited from contacting anyone. Their lawyers could be denied access to information about reasons for detention and detention conditions and treatment. Detainees were prohibited from revealing information related to their detention and could be detained for up to five years for violating that prohibition. Detainees' parents or guardians and lawyers could be detained for up to five years for divulging any information regarding the fact or nature of detention. There was no information that people had in fact been detained under such conditions, but it raised the question as to whether such provisions were truly necessary. They seemed excessive and were in violation of articles 7, 9 and 10 of the Covenant. Information would be appreciated as to the possibility that that legislation would be reviewed.

22. **Mr. Bouzid** asked if the Government of Australia intended to adopt a law against vilification or discrimination on the basis of religion. There was no such law at the federal level or in New South Wales, which was home to half of the Muslim population of Australia.

23. **Ms. Motoc** noted that Australia was one of the few countries to discuss the situation of indigenous women, a hidden and very sensitive topic in many countries. She wondered what areas still required attention in reference to indigenous people, what gaps remained and what issues continued to be sources of dissatisfaction for indigenous people.

24. **Mr. Fathalla**, commenting on paragraph 162 of the replies, which, referring to the Racial Discrimination Act, said that the terms "race" and "ethnic origin" were intended broadly and could cover particular religious groups. Race or ethnicity and religion should not be so linked, as people of the same ethnic background often professed different religions, while people of different races might profess the same religion. It would be preferable to have a clear reference to religious discrimination in the new legislation. Moreover, the reference in paragraph 162 to "particular religious groups" was not in conformity with article 20, paragraph 2, because the issue was in fact one of religion broadly.

25. **Ms. Wedgwood** stressed that the morally compelling, fundamental issue facing Australia was redress for what had been done to the Aborigines. It would take a generation to solve, but Australia had an obligation to see that every Aboriginal person could have the kind of life they wanted, whether that involved reviving traditional ways or true access to life in modern society.

26. **Mr. Illingworth** (Australia), replying to questions relating to immigration policies, said that the Christmas Island facility was governed by the usual Australian legal provisions that prevented unauthorized arrivals from applying for visas, unless they sought special ministerial intervention. The Covenant right of immigrants to seek protection was nonetheless safeguarded by the practical arrangements in place: asylum-seekers were assisted according to the same standards as in mainland immigration centres. The process on Christmas Island had been significantly strengthened by the new Government in terms of training and guidelines, natural justice, publicly funded professional assistance in submitting claims for asylum, and individual merit reviews of the decisions reached. If immigrants were found not to qualify for protection, they were not removed from the centre until their claims had been explored — a change from the previous "Pacific Strategy" of removal to other countries. The delegation had circulated copies of the ministerial document outlining the various immigration policy shifts. The new policies, adopted in July 2008, had been quickly implemented in law. The Christmas Island processes had time frames equivalent to those on the mainland, roughly about four to six months. Moreover, the High Court could hear complaints from individuals seeking redress for their treatment in the Christmas Island facility. The facility had been reopened for logistical reasons: many of the boat arrivals were accompanied by family groups, and that facility offered a greater range of less constraining options for housing them. Recently, most of the boat arrivals did seek protection and did receive it.

27. Mandatory detention decisions applied equally to immigrants on Christmas Island and on the mainland. Asylum-seekers were never detained as such. Indeed, most of the 4,000 asylum applicants per year were living in the community, often with work opportunities. Some, however, were being held because the grounds

on which they had obtained their entry visas were improper. The Government also detained those who arrived with no visa and could not be immediately cleared for immigration, not as a punitive measure but to allow time for the necessary health and security checks. There had been some detentions at the border and problems with unaccompanied minors on which he would obtain further information for the Committee. Generally, minors were held in the most accommodating environment possible, the residential arrangements on Christmas Island. Throughout the course of any detention, there was a statutory series of reviews, concluding with a review by the Ombudsman regarding the appropriateness of the detention.

28. The reference to consultation with "refugee experts" should of course be interpreted more broadly, to include consultations with the Human Rights Commissioner and the Human Rights Ombudsman, academics, community activists and international organizations such as UNHCR.

29. **Mr. Smith** (Australia) observed that the Prime Minister, going beyond the seminal apology to the "stolen generations" for events of the past, had indicated that the key was to move forward and address the injustices currently being committed against Australia's indigenous citizens, hence the ambitious Government commitment to closing the gap on indigenous disadvantage in the six target areas outlined in the written replies (CCPR/C/AUS/Q/5/Add.1) to the list of issues (para. 47). The first of the annual progress reports on how the gap was being closed had been made in February. At the moment the gaps were appalling: indigenous life expectancy was three times lower, child mortality rates twice as high, the educational disadvantages from 25 to 40 per cent higher, and unemployment rates three times higher.

30. A key component of achieving the targets was to re-establish the relationship with the country's indigenous Australians on a partnership basis, recognizing and celebrating indigenous culture and encouraging the formation of indigenous associations, and at the same time acting to address unacceptable patterns of behaviour against them.

31. **Ms. Nolan** (Australia), speaking of the safeguards against degrading treatment of prisoners, said that solitary confinement was always a last resort under the laws of the various states, and used only if necessary for the prisoner's own safety or that of others or for the good order of the prison. Those separated because of mental health problems had to be seen by a medical officer within 24 hours and regularly re-assessed. Those at significant risk of self-harm were placed in observation cells, which were usually single cells. As required by law, persons in solitary confinement did not have their diet, exercise, clothing or access to visitors reduced. Juvenile prisoners could be segregated for more than 24 hours only with the specific authorization of a senior prison official and a management plan, including visits by a psychologist, was mandatory. Comprehensive procedures were in place at the federal, state and territorial levels for all prisoners with mental health problems. In some cases, rather than being kept in isolation, they could be held in separate, secure mental health units that met the federal standards of the Mental Health Act of 1996. In general, the Corrective Service Act of 2006 established accountability mechanisms to ensure the well-being of segregated prisoners.

32. **Mr. Campbell** (Australia) said that the police did on occasion use tasers to subjugate suspects, as a less-than-lethal use of force, but generally sought to de-escalate a conflict before resorting to them. They were to be used only by expert officers who had received advanced training in their use and were re-certified annually. The notion of "reasonable force" underpinned all conflict-management strategies.

33. Western Australia did not intend to withdraw its mandatory sentencing laws, because they were deemed necessary. In fact, in the wake of a number of very serious assaults against the police, a bill had been introduced in the Western Australian parliament in December 2008 to amend the Criminal Code so as to mandate a 12-month prison sentence for anyone assaulting and causing bodily harm to a police officer.

34. He would not say that the delegation agreed entirely with Mr. Rivas Posada's characterization of Australia's report. However, he assured the Committee that it had been drawn up in good faith according to the Government's understanding of the guidelines at that time. The next report would be submitted in a different format.

35. Replies to any questions still unanswered would be sent to the Committee in writing as agreed.

36. **Sir Nigel Rodley** asked if the delegation could confirm that the policy of ruling that persons entering on an ordinary visa and applying for asylum at the

border had applied for the visa on improper grounds was under revision. Also, although he had been reassured by the statement that only highly trained police officers were allowed to use tasers, the information received from non-governmental organizations indicated that in fact that had not been the case in specific instances. Furthermore, using the test of "reasonable force" — which had been done in the past in the United Kingdom as well — could have very unfortunate results, because it did not carry with it the tests of necessity or proportionality. He hoped more information could be provided on that question.

37. **Mr. Campbell** (Australia), recalling that Australia wanted the kind of international engagement represented by its reports to the Committee, agreed that the dialogue had been rewarding and candid. Noting that Australia was the first to acknowledge the areas of disadvantage among its indigenous population especially, he expressed the hope that the delegation had conveyed the Government's firm commitment to redressing that situation. He also expressed appreciation to the Australian non-governmental organizations who had, very appropriately, brought their viewpoints to the Committee.

38. **The Chairperson** thanked the delegation of Australia for the detailed responses to the Committee's questions.

39. *The members of the delegation of Australia withdrew.*

The discussion covered in the summary record ended at 4.30 p.m.

United Nations CCPR/C/SR.2612

International Covenant on Civil and Political Rights

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Human Rights Committee

Ninety-fifth session

Summary record of the 2612nd meeting
Held at Headquarters, New York, on Wednesday, 25 March 2009, at 10 a.m.

Chairperson: Mr. Iwasawa

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant

Sixth periodic report of Sweden

This record is subject to correction.

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09-28011 (E)

The meeting was called to order at 10.20 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Sixth periodic report of Sweden (CCPR/C/SWE/6; CCPR/C/SWE/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Sweden took places at the Committee table.*

2. **Mr. Ehrenkrona** (Sweden) said that the consistent promotion and protection of human rights was a cornerstone of Sweden's foreign policy. In particular, his Government had identified freedom of expression as a prerequisite for combating oppression, abuse of power and other human rights violations and was intensifying its efforts to combat censorship and unlawful limitations of the Internet.

3. The Government was committed to promotion of the rule of law in general and protection of civil and political rights. In that connection, counter-terrorism required increased efforts to protect human rights standards and to denounce all forms of torture, as absolute prohibition of which was reflected in several provisions of the Swedish Aliens Act.

4. The Government also attached high priority to the prevention of all forms of discrimination, particularly racism, xenophobia and Islamophobia, as one of the main objectives of the national action plan for human rights 2006-2009. The Delegation for Human Rights had been established to support the objectives of the action plan.

5. The new Discrimination Act, which had entered into force on 1 January 2009, had merged seven civil laws into a single instrument and the previous four ombudsmen against discrimination into a single authority. It had also introduced protection in areas not previously covered by legislation, such as age and gender identity, and established a general prohibition of discrimination against employees in the public sector.

6. While his Government had always regarded the Committee's Views as authoritative, it continued to hold the opinion that although Sweden was a State party to the Optional Protocol, the Committee was not equivalent to a court and its Views were not binding under international law. Draft General Comment No. 33 clearly signalled that the Committee regarded its Views as decisions of a judicial body; Sweden was concerned at such an attempt to extend the Committee's competence beyond the scope originally intended for it, which might necessitate a new ratification by Sweden.

7. Referring to the controversial new Signals Intelligence Act, he drew attention to paragraph 123 of the replies to the list of issues (CCPR/C/SWE/Q/6/Add.1) and noted that the Government planned to submit proposals that would incorporate into its legislation new provisions to protect privacy of individuals and clarify the purposes for which signals intelligence could be used.

8. Another controversial issue was the December 2001 expulsion from Sweden to Egypt of two Egyptian citizens, Mr. Ahmed Agiza and Mr. Mohammed Alzery. In that connection, he drew attention to paragraphs 8 to 10 of the replies to the list of issues. Under the Swedish Constitution, public prosecutors, the courts and administrative authorities dealing with individual cases operated independently from the Government, which was therefore not in a position to instruct or request the prosecuting authorities to institute proceedings. However, the authorities had a legal obligation to initiate a preliminary investigation where there was reason to believe that a criminal offence had been committed. Swedish public prosecutors at various levels had considered whether such an investigation should be opened in the aforementioned cases and had decided not to do so.

9. Sweden had not participated in any form of "extraordinary rendition". Nevertheless the expulsions, and particularly the actions of Swedish Security Police officials, had been criticized both by United Nations treaty bodies and by Swedish national institutions. In order to prevent similar violations in the future, a new procedure for security cases had been introduced in accordance with the Aliens Act and the Special Control Aliens Act. The Swedish Police Board had also issued guidelines on the execution of expulsion orders, which stipulated that aliens had a right to humane and dignified treatment with full respect for their human rights.

10. While expulsion orders could be enforced in cooperation with foreign authorities, the national authorities maintained superior command within Sweden; in the event of mistreatment of an alien by

representatives of a foreign authority, the Swedish police would abort the enforcement.

11. In accordance with the Aliens Act, if an international body competent to examine complaints from individuals found that a refusal-of-entry or expulsion order was contrary to a Swedish commitment under an international human rights convention, either the Migration Board or the Government must grant a residence permit to the person covered by the order unless there were exceptional grounds for not doing so, as in the case of persons excluded from international protection under the 1951 Geneva Convention relating to the Status of Refugees and persons guilty of very serious crimes.

12. Similarly, if such an international body requested Sweden to suspend enforcement of a refusal-of-entry or expulsion order, a stay of enforcement would be ordered unless there were exceptional grounds for not doing so.

13. A decision to detain a person under the Aliens Act was based on a case-by-case assessment of the merits. In that connection, the Government had appointed a special investigator to examine European Parliament and Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals; a first report was to be submitted by the investigator on 15 June 2009. The Government had also appointed a commission to evaluate the Aliens Act, which would deliver its final report on 30 June 2009.

14. Progress towards the Government's long-term goal of full respect for human rights was an ongoing process. The forthcoming evaluation of Sweden's second national action plan for human rights would make an important contribution to that effort.

15. **The Chairperson** invited queries from the Committee on questions 1 to 16 of the list of issues (CCPR/C/SWE/Q/6).

16. **Ms. Wedgwood**, referring to question 1, urged the State party to consider withdrawing its reservation to article 10, paragraph 3, of the Covenant in view of the valid reasons for separating juvenile and adult offenders. Given that the current system in Sweden did not provide for such separation, she wondered whether any age restrictions applied to the sharing of cells.

17. She similarly urged the State party to consider withdrawing its reservation to article 14, paragraph 7. Cases where new information exculpated a person previously found guilty could be reopened in all legal systems since the rule against double jeopardy did not apply; however, she knew of no country except Sweden that allowed cases where the accused person had been acquitted to be reopened. The existence of such a possibility created a perverse incentive for the police not to complete its work.

18. Addressing the question of application of the Covenant by the Swedish courts (question 2), she questioned the statement, on page 3 of the replies to the list of issues, that the European Convention on Human Rights provided stronger protection than the Covenant. She wondered whether the Government had ever made a systematic study of the Committee's jurisprudence; in particular, there was nothing comparable to article 26 of the Covenant in the European Convention. The State party might usefully incorporate that article as a free-standing provision into its legal system and encourage judges to take it into account.

19. On the question of equal treatment for women (question 6), she asked whether the State party had considered additional measures to encourage more equitable representation of women in the higher tiers of education, whether universities allowed women to take time out during their childbearing years and whether they could work past the retirement age in cases where they had lost as much as 10 or 15 years of their careers because of childbearing.

20. Concerning violence against women (question 7), she inquired whether Sweden had made any effort to recruit police officers from among the ethnically diverse communities that they were required to serve. Information about any protection available to ensure that undocumented women victims of violence could seek help from the police would also be appreciated. She wondered why the courts could not issue restraining orders before, rather than after, an act of violence and what priority was given to such cases by the police. She invited comments on reports that only a small number of cities possessed shelters for battered women and that they relied for that purpose on underfunded non-governmental organizations (NGOs). It would be useful to know whether data collected on such violence had been broken down according to the ethnic background and legal status of the victims.

21. Moving on to question 8 (honour killings and female genital mutilation), she recommended the classification of such mutilation as a specific act of criminal assault since as with statutory rape, lack of consent could be presumed. It would also be interesting to learn whether data on the subject was collected from doctors and hospitals and whether any thought had been given to extending liability for honour killings to all those involved in the decision to commit the act, even if they did not participate in it. The Committee would welcome information on any ongoing measures taken by the schools and in foreign language broadcasts in order to wean people away from such archaic attitudes to chastity; on witness protection for those who reported such killings; and on any publicity given to the possibility of waiving the two-year marriage requirement for permanent residency of immigrant women who were victims of abuse.

22. Addressing the issue of early marriage (question 9), she noted that it was not a criminal offence in the country except in so far as it resulted from unlawful coercion, which was difficult to prove. It would be both morally instructive and a deterrent if the State party were to treat early marriage as a crime or misdemeanour. Lastly, with regard to the treatment of persons with disabilities (questions 10-11), she stressed that practical realities were at least as important as written law. The municipalities had responsibility for providing such persons with aid and ensuring the accessibility of workplaces, housing units and public facilities. She regretted the absence of any data in the sixth report on the degree of compliance with international disability requirements; the Committee would also be interested to know whether the Government provided financial incentives for the hiring of persons with disabilities.

23. **Sir Nigel Rodley**, referring to question 3 on the list of issues, said that in view of the active role played by Sweden in the international prohibition of torture and its constant opposition to all related practices, he had been surprised to learn of the deportation to Egypt of the two Egyptian citizens. The current Government's acknowledgment that Mr. Alzery's human rights had been violated, as reflected in its decision to repeal the decision taken by the previous Government, allayed any fear of the recurrence of such a measure, but there was still a need to review what had happened. If, as seemed to have been suggested, the deportation could be described as lawful, he wondered whether it had been considered so under national or international law. Information on measures taken to avoid any repetition would also be appreciated.

24. Referring to article 13 of the Covenant, he said that clarification would likewise be useful regarding the adjudication powers of the Migration Board under the new Aliens Act, particularly the extent to which the Board was able to act independently of the Government. In addition, he wondered whether the lessons learned from Mr. Alzery's case had been absorbed at the institutional level, especially in view of the unsatisfactory nature of the measures initially taken to monitor it following the recommendation made by the Committee in 2002. He reiterated the Committee's position that where there were substantial grounds for believing that torture might be used in a country, it was contrary to the Covenant to expel anyone to that country.

25. Taking up question 15, he said that while he was reassured by the written reply, fuller information would be appreciated about the action plan adopted to minimize the risk of disappearance of unaccompanied asylum-seeking children. It would also be interesting to know whether the persons reported to have been prosecuted for related trafficking had committed the offence before or after the adoption of the action plan and whether any new cases had arisen since then.

26. **Ms. Majodina** noted that the Government's reply to question 4 mentioned the new Office of the Ombudsman against Discrimination, which represented a merger of the previous anti-discrimination ombudsmen. She hoped that the Office's mandate would be defined as broadly as possible, as urged in the Paris Principles, so as to make it truly effective. It would also be useful to obtain more information on the planned activities of the Office, as well as on those of the Delegation for Human Rights, whose focus should include, but extend beyond, racism, xenophobia, ethnic discrimination and religious intolerance.

27. Turning to question 13 on the protection of persons with disabilities from abuse, she noted that there seemed to be no specific national programme to deal with such problems, for instance by protecting disabled women from violence, providing disabled victims with legal support and encouraging them to seek legal redress if their rights were violated. Although the social workers and caregivers had a legal obligation to report abuse, there seemed to be few such

cases in practice. She asked whether programmes existed to address abuse and, if so, whether persons with disabilities had participated in their development.

28. With regard to question 16 on education and the culture of tolerance, she requested more information on machinery to monitor discrimination and bullying in the schools. Various initiatives had been introduced in order to increase awareness of the problem and to combat discrimination; she wondered how effective those initiatives had been.

29. **Mr. Pérez Sánchez-Cerro** asked, in connection with question 5, how Sweden's relatively liberal asylum policies ensured that persons granted asylum had not been involved in terrorist activities in other countries. During visits to Sweden he had seen groups of young people, apparently refugees, selling literature, raising money and advocating the overthrow — usually by violent means — of other Governments, particularly in Latin American and Arab countries. The Swedish Government's tolerance for such activities was disturbing and seemed to run counter to its obligations under Security Council resolution 1373 (2001).

30. Turning to question 6 on gender mainstreaming and the equality of men and women in working life, he noted that the Constitution, the relevant legislation and the courts seemed to have set no standards on gender issues and made no mention of the Convention on the Elimination of All Forms of Discrimination against Women or of International Labour Organization (ILO) Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value. There also seemed to be little legislation designed to prevent discrimination against foreign nationals in the workplace and discrimination based on political or social grounds.

31. Noting, with reference to question 12, that Sweden had apparently reduced its budgetary support for activities aimed at protecting persons with disabilities, he asked whether that decision would not weaken Sweden's capacity fully to implement ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons).

32. **Mr. Amor** said that there was much to admire in the Swedish approach to human rights; the State party's continued reservation to article 20, paragraph 1, on the prohibition of propaganda for war was therefore baffling. The grounds for the reservation, described in paragraph 146 of the sixth report (CCPR/C/SWE/6), included the desire to protect freedom of expression and public debate and the difficulties in delimiting the punishable area. He urged the delegation to review the Committee's General Comment No. 11 on article 20, which dealt with those issues, and pointed out that paragraph 2 of the article, to which the State party had not objected, placed similar restrictions on freedom of expression. The validity of the reservation was further called into question by the fact that the prohibition of war propaganda was increasingly becoming an established principle of international law; it would be useful to review the Committee's General Comment No. 29 on article 4, especially paragraph 3 thereof, on the inadmissibility of prolonged derogation from article 4 rights.

33. **Mr. Fathalla** noted that paragraph 9 of the report, in the section dealing with article 1 issues, mentioned the formation of a boundary committee for land where reindeer husbandry rights existed and asked whether there were Sami representatives on that committee. Turning to paragraphs 25 and 26 of the report, concerning article 2, paragraph 2, of the Covenant, he asked how the Covenant meshed with domestic law and how what the report referred to as "treaty-compliant interpretation" operated. With regard to paragraph 61, relating to article 7, it would be useful to have a fuller explanation of how the drawbacks of establishing a special authority for internal investigations were thought to outweigh the benefits. Paragraph 91, which dealt with issues under article 10, paragraph 1, stated that prison staff had received training in preventing violence between prisoners; he wondered why such training had not been provided to prisoners as well.

34. **Ms. Chanet**, referring to question 1 on the list of issues, requested further information on the State party's reasons for maintaining its reservation to article 10, paragraph 3, of the Covenant. She would also appreciate clarification as to whether it was Sweden's reservation to article 14, paragraph 7, or the principle of non bis in idem contained therein, that had been invoked before the Supreme Administrative Court (mentioned in the reply to question 2). Clearly, the provision was not so restrictive that its principle could not be invoked before the courts. As for Sweden's reservation to article 20, paragraph 1, she conceded that it was difficult to determine what constituted propaganda for war and to take action against other States parties on that basis. However, the Committee

would soon draft a new general comment on article 19, which would address its implications for article 20. In any event, she failed to understand why the State party took issue with article 20, paragraph 1, but not with paragraph 2 of the same article.

35. States parties had perhaps exaggerated the potential impact of General Comment No. 33. While the Committee was not mandated to produce binding decisions, neither did it issue mere opinions. It was similar to an international judicial body in so far as it could be seized with a matter only when all domestic remedies had been exhausted. General Comment No. 33 simply sought to derive maximum effect from the Covenant and its Optional Protocol, which must be implemented in good faith by all States parties. The Committee exercised caution in examining communications; the fears aroused by General Comment No. 33 were therefore unfounded.

36. With regard to counter-terrorism legislation, Sweden had had little experience with terrorism within its borders; nevertheless, further details on the relevant procedures in place would be useful. In that connection, she wondered whether the conditions of detention and for the hiring of lawyers were different in alleged terrorism cases. The State party's definition of terrorism also remained unclear.

37. **Ms. Wedgwood** said that while she did not dispute the possible health benefits of electroshock therapy or the State party's reluctance to regulate treatment methods through legislation (mentioned in the reply to question 14), there was no harm in collecting and analysing data on the use of such therapy. The good faith ability of institutions to give appropriate treatment to patients, with which the State party did not wish to interfere, needed to be balanced with a desire to prevent abuse.

38. Turning to the issue of persons with disabilities, she said that concern remained that people with psychiatric problems were sometimes deprived of their liberty when outpatient care would suffice; persons with disabilities should be able to enjoy life to the fullest possible extent. Clarification as to the ability, or lack thereof, of persons with disabilities to bring private lawsuits against private institutions would also be appreciated.

39. **Mr. Bouzid** requested clarification of the exact meaning of honour-related crime (mentioned in the reply to question 7) and asked what measures the National Police Board had taken to prevent, detect and investigate such crimes.

40. *The meeting was suspended at 12.25 p.m. and resumed at 12.45 p.m.*

41. **Mr. Ehrenkrona** (Sweden) said that Sweden's reservations were not prohibited by the Covenant, nor were they incompatible with its object and purpose; thus, they were consistent with the provisions of the Vienna Convention on the Law of Treaties. Moreover, no State party had objected to Sweden's reservations.

42. **Ms. Kelt** (Sweden), referring to her Government's reservation to article 10, paragraph 3, said that juvenile offenders were very rarely incarcerated with adult offenders. Children under the age of 15 could not, by law, be imprisoned and young people between the ages of 15 and 21 were given prison sentences only for extremely serious crimes. The legislation through which Sweden had acceded to the Covenant provided for the practice only in exceptional circumstances where it allowed young offenders to remain in close proximity to their schools, families and communities.

43. There were only two circumstances under which a trial could be reopened after an individual had been tried and acquitted: where a member of the court or the prosecutor had committed the crime or where new evidence or circumstances had come to light since the original trial. The submission of new evidence did not lead automatically to a retrial; the prosecutor had to present valid reasons for not having invoked it during the original trial.

44. **Mr. Ehrenkrona** (Sweden), referring to his Government's reservation to article 20, paragraph 1, said that Sweden considered freedom of expression to be one of the most important rights. Under national law, there were very few cases in which that right could be restricted. War propaganda in Sweden had not been considered such a major problem as to warrant an exception to that rule. While the Covenant restricted freedom of expression in relation to war propaganda, States parties were not obliged to comply with that provision. Sweden did not, at present, plan to reconsider its position in respect of the reservation.

The meeting rose at 1 p.m.

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Summary record of the 2613rd meeting
Held at Headquarters, New York, on Wednesday, 25 March 2009, at 3 p.m.

Chairperson: Mr. Iwasawa

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Sixth periodic report of Sweden (*continued*)

This record is subject to correction.

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Sweden (*continued*) (CCPR/C/SWE/6; CCPR/C/SWE/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Sweden took places at the Committee table.*

2. **The Chairperson** invited the delegation of Sweden to continue its replies to the oral questions put at the previous meeting by members of the Committee in connection with questions 1-16 on the list of issues (CCPR/C/SWE/Q/6).

3. **Mr. Ehrenkrona** (Sweden) said that it was for each State party to decide how it wished to implement the Covenant. Sweden did not believe it necessary to incorporate it into national law in the same way as it had done with the European Convention on Human Rights, after lively debate, in 1994. The Swedish courts relied more often on the jurisprudence of the European Court of Human Rights than directly on the text of the Covenant. That provided wider protection of human rights and was clearer, since there was substantial case law relating to the interpretation of the European Convention. The Covenant provided wider protection from discrimination; however, one of the additional Protocols to the Convention sought to broaden the scope of its non-discrimination clause. Sweden had not yet ratified that Protocol, as it was waiting to see how it would be interpreted by the European Court. In most cases, application of either the Covenant or the Convention resulted in the same practical outcomes. Sweden did not plan to incorporate the Covenant into national law at present.

4. Turning to the queries regarding terrorism, he said that the rulings by the European Court of Justice in the cases of *Kadi* and *Al Barakaat v. the Council of the European Union and Commission of the European Communities* were significant. The European Court of Justice had quashed the European Council ordinance on implementation of the decisions in those cases. The Commission had decided to prolong the listing of both Kadi and Al Barakaat, on the basis of information received from the United Nations Sanctions Committee. Both Kadi and Al Barakaat had therefore brought new cases to the European Court of First Instance to challenge that decision. Sweden was awaiting the outcome of those cases. In dealing with them, the European Court of Justice had examined the substance of the provisions of the European Convention on Human Rights and found that article 6 had been violated. The problem was that in order to meet the requirements for a fair trial under article 6, in a case dealing with the right to property, facts and circumstances needed to be ascertained that justified the interference. In the cases of Kadi and Al Barakaat, the existence of those facts and circumstances was unclear. Sweden was well aware of what was at stake.

5. Turning to another terrorism-related query, he said that Sweden did not have a specific policy of screening asylum-seekers, but if the Migration Board suspected that an asylum-seeker had links to terrorism, it could report those suspicions to the Swedish Security Police who would then investigate.

6. **Ms. Kelt** (Sweden) said that, since April 2003, Sweden had a new law on criminal responsibility for terrorist offences, enacted following a framework decision agreed within the European Union. There was no comprehensive definition of what constituted a terrorist offence, but there was a catalogue of "normal" offences that, when carried out with the purpose of seriously intimidating a population or a group of a population or unduly compelling a public authority or an intergovernmental organization to an act or abstain from acting in a way which risked seriously destabilizing or destroying fundamental political or constitutional values, were considered to be terrorist offences. The normal penalty given for those offences was between 10 years and life imprisonment, which corresponded to the sentences for other serious offences. There were no specific procedures with regard to terrorist offences; suspects were treated in exactly the same way as persons suspected of other offences.

7. Turning to the issue of incitement to terrorism, she said that Sweden had legislation whereby someone who urged or attempted to entice someone else to commit a crime could be convicted of inciting rebellion. Such acts also infringed Sweden's constitutional laws, so the Chancellor of Justice could prosecute those cases.

8. **Ms. Goldbeck-Löwe** (Sweden), addressing question 6 on the list of issues, said that the Government of Sweden had taken measures to address persistent gender inequalities in employment, which

included efforts to stimulate women's entrepreneurship, strengthen the right to full-time work and promote equal pay. In May 2006, a new set of national objectives for gender equality had been created. The overall objective was that women and men should have equal power to shape society and their own lives. It also had four subsidiary objectives: equal distribution of power and influence; economic equality between women and men; equal distribution of unpaid care and household work; and an end to men's violence against women. The Government was preparing a strategy to promote gender equality in the labour market, bringing together policies concerning social affairs, education, entrepreneurship and the labour market, which would be presented to Parliament soon.

9. **Ms. Ekman Alden** (Sweden), addressing the question on women and pensions, said that the issue had to be examined against the background of the Government of Sweden's general objective of increasing women's participation in the labour market and their opportunities to combine having a career with family life. It was general Government strategy to promote longer working, to reflect the changing demographics of society, and it was now possible for people to continue working after pensionable age until the age of 67, or even longer with the employer's agreement, in order to continue to contribute for a longer period.

10. **Ms. Goldbeck-Löwe** (Sweden) said that a report of the implementation of the action plan to tackle men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships adopted in November 2007 would be submitted to Parliament in 2010.

11. The women's shelter movement in Sweden dated back to the early 1980s. There were presently approximately 160 shelters under the auspices of two national organizations. Most of them were run by non-governmental organizations; only a handful were owned and run by municipalities.

12. Swedish County Administrative Boards estimated that in 2004, between 1,500 and 2,000 girls and young women had been exposed to violence and oppression in the name of honour, and 10 to 15 per cent of them had required sheltered accommodation. No statistics were available with regard to the practice of female genital mutilation.

13. **Ms. Tekin Befrits** (Sweden), responding to Ms. Wedgwood's question about recruitment to the police from minority groups, said that, in the course of their duties, police officers encountered people from a range of ethnic, cultural and linguistic backgrounds and therefore adapted their working methods to the needs of those people. They provided printed and online materials in the relevant languages and used interpreters, as well as employing officers proficient in the relevant languages. The police training academy welcomed applicants from minorities and other groups with non-Swedish ethnic backgrounds, and ran special information campaigns targeting those groups. In that way, the minorities could exert influence and the police could be more effective. In addition, referring to the question about Sami police officers, she said that the police authority in Norrbotten employed approximately 10 police officers from the national minority groups — Samis, Finns and Tornedalers — including some Samis who were reindeer herders in their spare time. The police authority tried to schedule their work so that the police matters in Sami villages were dealt with by Sami-speaking staff.

14. **Mr. Ehrenkrona** (Sweden) said that if illegal female immigrants had been victims of crime they were able to report it. However, since they were in the country illegally, there could be no guarantees that they would not be expelled by the police of they did so. If an illegal female immigrant needed protection she could turn to social services, which were obliged not to reveal information about her to the police unless she had committed a serious crime.

15. **Ms. Kelt** (Sweden) said that crimes of assault were a high priority for the police and the Government in Sweden, as stated clearly in the November 2007 action plan. Special medical teams assisted police in their investigations by examining women who had been sexually abused or assaulted. Photographs were taken and there was an increase in the use of videotaping both within and outside the courts. It was not yet possible to issue restraining orders before a crime had been committed, but the Government had set up a Stalking Inquiry which had recently submitted a proposal to change the law and replace restraining orders with non-contact orders, which would be easier for a person to obtain before they had been subjected to a crime, and to enlarge the applicable area for such orders. The Government was in the process of

considering the report. There was no fixed timetable but the issue was high on the agenda.

16. Sweden did not have statistics disaggregated by ethnic background and legal status.

17. Female genital mutilation had been criminalized in Sweden since 1982, regardless of whether consent was given, and carried the high penalty of 2-10 years in prison. Though it was easy to prove that the crime had been committed, it was hard to prove by whom, but the burden of proof had not been put on suspects to prove their innocence. However, family members and others could be held responsible for complicity in the matter if they incited or encouraged girls to submit to the procedure.

18. **Ms. Tekin Befrits** (Sweden) said that the Government of Sweden had taken a variety of measures to promote respect and understanding and to raise awareness of various human rights issues. In addition to the measures embodied in the nine-year school curriculum referred to in paragraph 82 of the written replies, in order to obtain a bachelor's or master's degree students must demonstrate knowledge of gender issues, the basic values of society and democracy, and how to prevent and counteract discrimination against and other degrading treatment of children. The Forum for Living History was a Government agency with a broad mandate aimed at promoting tolerance, democracy and human rights. It worked to support people who sought to raise awareness among young people of the importance of respecting the equal value of all, using lessons from history to help people reflect on issues such as tolerance, democracy and personal responsibility. It collaborated with other bodies at all levels, worked closely with schools, universities and local authorities, and published a series of books and pamphlets.

19. **Mr. Ehrenkrona** (Sweden) said that the Migration Board had not provided information that would show whether women migrants were aware that the rule under which they could obtain a residence permit only after living with a Swedish man for two years could be waived for women who had been abused.

20. **Ms. Kelt** (Sweden), responding to a question on witness protection programmes, said that the same commission that had examined the issue of non-contact orders had also looked at measures to protect victims and witnesses. There were currently 11,500 people whose data was protected in Sweden, which could be done in one of four ways: under the Secrecy Act; by means of a security flag in the national population register; by allowing them to remain registered at an old address after having moved; or by a court of law granting them completely fictitious personal data. Witness protection was very difficult for victims, who lived in fear of being found and were sometimes forced to flee. The Commission had made proposals including the creation of links between victims and municipalities, using specially trained staff. The Commission had also highlighted the need for education and information, in order to achieve a change of attitude and fully support and protect vulnerable women and children.

21. Turning to the question of early marriage, she said that while there was no specific law in Sweden prohibiting underage marriage, a bill was planned for 2010 to the effect that a guardian who allowed a Swedish citizen or resident under the age of 16 to enter into a marriage that was valid in the country where the ceremony was performed could be imprisoned for up to two years for the offence of allowing child marriage.

22. **Ms. Ekman Alden** (Sweden) said that the Swedish Disability Federation report provided the only available statistics on violence against women with disabilities. The National Board of Health and Welfare had decided to investigate that largely neglected topic more extensively itself.

23. As indicated (written replies (CCPR/C/SWE/Q/6/Add.1) to the list of issues (CCPR/C/SWE/Q/6), para. 67), all service staff in institutions for the disabled were instructed to report any mistreatment of that particularly vulnerable group, and the municipalities passed such information on to the National Board of Health and Welfare so that the question could be tracked nationally. The Government was planning to provide broader training to institutional staff; and a bill amending the Social Services Act was being drafted, to legislate what constituted protective regimentation — especially necessary in the case of the mentally ill — as opposed to abusive coercion of institutionalized persons with disabilities. The overall objective of the Government's disability policy was to ensure the integration of the disabled into the community as active citizens, and special solutions must be considered simply a complement.

24. The Government was giving priority to implementing its cross-cutting National Action Plan for

Disability Policy in the light of the Convention on the Rights of Persons with Disabilities, which Sweden had just ratified. The Action Plan included strategies for providing access for the disabled to housing and other buildings, public transport and digital services, and ensured funding for the new activities. Disabled persons had the right to go to court to demand their entitlements from the municipalities. The Government had set up a training programme for municipal officials regarding their responsibility to supervise the provision of special services and the implementation of the regulations to meet the needs of the disabled. Projects were carried out in close conjunction with the municipalities and county councils, often combining services for the disabled and the elderly, and persons with disabilities were informed about the quality of assistance they could expect.

25. **Ms. Tekin Befrits** (Sweden) pointed out that failure to provide physical access for the disabled to buildings was regarded under the new Discrimination Act as a form of discrimination when it prevented access to higher education or employment. The Government had not included the full range of access to goods, services, housing, health care and medical care in that legislation because it felt that more time was required to determine precise rules for that crucial area that were also reasonable in terms of the cost.

26. **Mr. Ehrenkrona** (Sweden) observed that disabled persons had the same rights as any other citizen to file compensation claims in court.

27. Turning to the case of the two Egyptian citizens expelled from Sweden for security reasons, he said that those had not been instances of rendition but rather the outcome of a careful decision taken in good faith under the Aliens Act then in force, although it had subsequently proved to be problematic.

28. **Ms. Bratt** (Sweden) referring to the disposition of the cases of the two Egyptians, which had ultimately involved compensation for violation of Covenant rights, recalled the information provided in Mr. Ehrenkrona's opening statement at the previous meeting and in the written replies to the list of issues (paras. 8-10 and 107).

29. In order to prevent a recurrence of such improperly handled expulsions, under the new 2006 Aliens Act it was now the role of the Migration Board to adjudicate all asylum cases in the first instance, including security cases where the Security Services had recommended rejection of residence permits. The decisions of the Board could be appealed to the Migration Court, which then transmitted its opinions to the Government; and the Government was bound by any opinion finding an impediment to enforcement of expulsion. The new requirement of examination by more than one instance had strengthened the legal rights of individual asylum-seekers.

30. The question of diplomatic assurances had been dealt with in the written replies (para. 107). Each expulsion order had to be considered on its own merits in order to ensure that it did not constitute refoulement. Given the absolute prohibition against torture in several provisions of the Aliens Act, asylum-seekers could not be returned to countries where they would be subject to the death penalty or to torture or cruel, inhuman or degrading treatment.

31. The common action plan set up by the Government to handle situations like that of the unaccompanied asylum-seeking Chinese children who had disappeared into Swedish society (written replies, para. 74) had proved very effective. The whole asylum process had been speeded up: any arriving children were taken care of immediately at the airport and provided with legal counsel, and decisions were reached within one to two days. Most such children were not asylum-seekers in the normal sense, for they presented no grounds for asylum and generally lacked identification papers, making it difficult to return them to China. Lately there had been a drop in the numbers of unaccompanied minors arriving — only three in 2008 and three in 2009. Also, a Chinese couple who in 2006 had smuggled 46 children into Sweden had been prosecuted and sentenced to two years in prison.

32. **Ms. Tekin Befrits** (Sweden) said that the mandate of the new Ombudsman against Discrimination (written replies, para. 11) was to implement the new anti-discrimination legislation; promote equal rights and opportunities; advise victims of discrimination about claiming their rights; educate, inform and hold discussions with other public or private agencies, organizations and individuals; follow international developments and maintain contacts with international organizations; conduct research, and propose legislative amendments or other measures to the Government.

33. **Ms. Goldbeck-Löwe** (Sweden) said that the Delegation for Human Rights was a temporary agency,

whose work would conclude when it submitted its final recommendations to the Government in 2010. Its functions were to support Government agencies, municipalities and city councils in their human rights work, develop strategies to increase a knowledge of human rights among target groups in the community, stimulate public discussion of human rights and make proposals as to how the Government's human rights work could best be supported in the future. Once the Delegation's work concluded in 2010 with its final recommendations to the Government, the establishment of an independent human rights institution in accordance with the Paris Principles could be discussed.

34. **Mr. Ehrenkrona** (Sweden), responding to the criticism that the Constitution was largely silent on women's rights, pointed out that chapter 2, article 16, of the Constitution both forbade unfavourable treatment under the law on the grounds of gender and allowed positive discrimination through legislation seeking to promote equality between women and men.

35. **Ms. Goldbeck-Löwe** (Sweden) said that 2008 Government statistics showed that women's pay was only 84 to 92 per cent of that of men. The Government was of course making a number of efforts to narrow the gap: for instance, the Mediation Institute was emphasizing the negotiation of wage-bargaining agreements that included a provision on equal pay for equal work, and in recent years the situation had been improving.

36. **Mr. Ternbo** (Sweden) said that there were two Sami representatives on the boundary committee. One of them was a member of the Sami Parliament, and the other was from the Swedish Sami Association.

37. **Ms. Ekman Alden** (Sweden) said that the use of electroshock therapy must be viewed from a broad perspective. It was just one measure used in the treatment of severe psychiatric disorders. There were several forms of psychiatric treatment which could be, and in fact were, also used as torture in various parts of the world. However, the issue of electroshock therapy must not be looked at in isolation. A patient's entire set of treatments should be assessed together.

38. Legislation in the field of health care, including psychiatry, provided for the right to file a report, possibly leading to investigation and a decision, if someone felt that injury had been caused or inappropriate actions taken.

39. The legislation covering compulsory mental care was considered dated, and recently the Government had created a commission to analyse the legislation and propose changes. The commission members included people with psychiatric disorders and users of psychiatric care, as well as providers and specialists.

40. Prison staff were trained to avoid and prevent violence among inmates. Other measures to reduce violence included anti-drug and anti-alcohol programmes in the prisons. Inmates were also provided with activities and opportunities to socialize, receive education and exercise. In extreme cases, isolation and other measures were used.

41. **The Chairperson** invited queries from the Committee on questions 17 to 29.

42. **Mr. Bhagwati** asked, with reference to question 17, whether it was correct that the State was required to provide a public defender in every case where the accused was not represented by a lawyer; whether the Government had a list of public defenders from which the accused would select a lawyer; whether the public defender was paid by the Government; and whether, if the accused was convicted, the costs of the public defender were borne by the accused and the State did not pay the cost; if so, it was rather strange that the outcome of the case determined who would pay the legal fees, especially as the defendant might be unable to pay.

43. **Ms. Kelt** (Sweden) said that an investigator tasked with looking into establishing a body to handle complaints against the police had concluded that since the body would be small, it would need to seek technical and other assistance from the police, which would compromise its independence and its functioning, and had suggested instead that an independent unit be established within the National Police Board. The Government and a majority of experts agreed with the investigator's conclusions. The National Police Board would present a proposal for such a body to the Government.

44. Regarding questions 26 and 27, more details would be appreciated regarding the role of the Minister of Agriculture, how the Sami and the two other indigenous peoples received legal assistance and how their rights were safeguarded.

45. **Mr. O'Flaherty** said that the first part of question 18 had not been fully answered. It was not

clear whether medical care for detainees was assured in practice and whether the current system was adequate. While consultations with general physicians were provided, as were consultations with psychiatrists, additional details would be appreciated on how and whether consultations with other specialists were made available to detainees. Some people who had been detained by the police had told the Committee Against Torture of cases when a doctor had genuinely been needed and yet access had been denied.

46. Several organizations of people with disabilities had expressed concern about lack of knowledge among police and prison personnel on how to treat people with various disabilities. A response to that remark would be welcome.

47. With respect to question 24, he wished to know whether intolerance of Jews, Muslims and homosexuals remained at disturbingly high levels among young people, as indicated by a survey done in Sweden in 2004. There was some doubt that the Living History Forum was adequate to the task of combating intolerance and that it had a sufficient mandate and resources. Even its name was a reference to the past. It was not clear that the response to new, contemporary forms of intolerance was sufficient.

48. Given the independence of the municipal authorities, the Committee would like to know how the State was mainstreaming combating intolerance across the public service and encouraging local and county governments to tackle racism and intolerance. With reference to question 25 and to improving the role of municipal authorities in dealing with Sami issues, the Advisory Committee on the Framework Convention for the Protection of National Minorities had stated in its Second Opinion on Sweden, adopted on 8 November 2007, that the central authorities had made efforts to involve local authorities more consistently in efforts to advance minority protection, but that regrettably, those efforts had provoked only limited interest among the local authorities. That was cause for concern, given the important role played by the local authorities in minority protection under the Constitution. He therefore requested further information in response to that question, not on the autonomy of the municipalities, but rather on how the central Government was working creatively with local authorities. The State could not invoke the independence of the local authorities to justify non-enforcement of the Covenant across its territory.

49. He also requested further information on the initiatives of the Sami Parliament to engage with the municipalities and on the success of those initiatives.

50. **Sir Nigel Rodley** wished to draw the State's attention to Communication No. 1472/2006, *Sayadi and Vinck v. Belgium*, which might provide some idea as to the thinking within the Committee about the criteria for interpreting Security Council resolutions in the area.

51. He requested confirmation that, during consideration of a case by the Migration Board, it was not possible for a person to be removed from the country for any reason, and asked if any more children had disappeared since the entry into force of the new action plan.

52. The reply to question 19 stated that from 2007 to 2008 there had been a reduction in the number of complaints against policemen in connection with major demonstrations. He requested specifics as to how many complaints there had been each year and what the actual reduction had been. Normally, statistics about complaints against the police would not be limited to what had occurred during major demonstrations. More information as to where the complaints were directed, how they were handled and what the outcomes there had been must be provided for the Committee to be able to conclude that an independent complaints procedure was not necessary. The information provided was insufficient to draw the conclusion that Sweden was exempt from the common rule that police were not generally the best monitors of their own misbehaviour. Moreover, he requested reassurance that the norms that the Swedish police were supposed to respect were indeed those of the United Nations Basic Principles on the Use of Force and Firearms.

53. **Ms. Majodina** asked how confidentiality was protected in migration court proceedings. In asylum cases, oral hearings were often held behind closed doors. Changes were being proposed to give the courts greater latitude to classify the identities of asylum-seekers. A Government inquiry had concluded that no applicant request for a closed hearing had ever been denied. However, according to Amnesty International, Swedish migration courts often did not maintain confidentiality, nor did they always accede to asylum-seekers' request for closed hearings. That raised concerns about safety, especially when rejection of applications led to deportation. Amnesty International

had requested that asylum-seekers be informed that confidentiality might not be respected in all proceedings, but the Migration Board had not responded to that request. She asked for the delegation's views.

54. There were reports that information used in expulsion decisions was not always available to the affected individuals, allegedly owing to the involvement of the Swedish Security Service. That raised the principle of equality of arms with regard to access to information and the opportunity to contest arguments by a party to the proceedings. She would like the delegation to explain the degree to which evidence was withheld from applicants on national security grounds and what changes could be effected in court proceedings to ensure protection of the right to equality of arms.

55. The proposed new legislation on signals intelligence in defence operations, which would provide broader covert surveillance powers and adversely affect the right to privacy under article 17, was cause for concern. The operations authorized under the law could constitute unlawful or arbitrary interference with privacy. The law also came on the heels of troubling allegations of abuse of surveillance mechanisms by a Government agency, based on leaked information by an employee of that agency stating that telephone conversations had been tapped for the past 15 years and that Internet traffic had been monitored for the past 8 years. If that information was accurate, such surveillance would constitute a direct violation of the Covenant.

56. The law had been approved by Parliament in 2008, but there was a Government initiative to reform the law before it went into effect. Details on steps taken to protect privacy and the right to freedom of expression for all, including persons of foreign origin, would be appreciated. More information on the scope and content of the proposed amendments would have been helpful. Any comments by the delegation on the possibility of access to ordinary courts by concerned persons to obtain binding orders requiring disclosure as to whether they had been or were subject to surveillance would also be welcome.

57. The State party had said that the new Act on Covert Bugging allowed for covert surveillance in preliminary investigations when an individual was reasonably suspected of committing or attempting to commit an offence; she would be interested to know if, in the course of such surveillance the authorities heard a crime being planned, they allowed it to take place or took action to forestall it.

58. **Mr. Pérez Sanchez-Cerro** wondered whether, in the case of asylum-seekers suspected of terrorism, verification was carried out with the country of origin and whether, if those suspicions were confirmed, the individuals were detained, granted asylum or returned to their country of origin. He also wished to know whether Swedish non-governmental organizations had participated in drafting the report for Human Rights.

59. Finally, he wondered whether the Delegation referred to was the national human rights institution, in accordance with the Paris Principles, what its composition was and whether it would provide follow-up to the Committee's concluding observations and recommendations.

60. **Ms. Motoc** requested further information on how the Sami Parliament affected the Sami community at the local level, whether it made a difference on the ground and how it was perceived. Further, it would be helpful to know how the local and national authorities and the Sami Parliament shared responsibilities and how the Sami made use of the traditional rights they claimed, including land use, hunting rights and the right to natural resources.

61. **Ms. Kelt** (Sweden) said that, except in the case of persons accused of petty crime, the court appointed a public defence counsel to any suspect under arrest or detention who so requested. In certain special circumstances, a public defence counsel was appointed automatically. The court had a list of public defence counsels from which to choose. Public defence counsel was paid for by the State or, if convicted, the accused. Should the person convicted be unable to pay, as was generally the case, the State covered the cost regardless.

62. **Mr. Ternbo** (Sweden) said that the Ministry of Agriculture essentially played a coordinating role. The inter-ministerial working group on Sami issues sought to improve the effectiveness of the various ministries' work on Sami issues and to provide the related parliamentary working group with information and data relevant to its work. The special working group on Sami issues, established by the Government two years earlier and composed of members of parliament from all four political parties, was responsible for

considering the recommendations of the Boundary Delimitation Committee, the Hunting and Fishing Rights Inquiry and the Reindeer Breeding Policy Commission. Those recommendations and the working group's views on them would be addressed in the Sami bill due in March 2010. The Ministry of Agriculture was leading efforts to draft that bill.

63. The Sami had the same right to legal aid as other citizens. However, under the Legal Aid Act, legal aid was not granted to legal entities. Sami villages were considered legal entities. Sami rights were recognized in the Constitution, the Forestry Act and, to some extent, the Minerals Act and Reindeer Husbandry Act.

64. Effective cooperation between the central Government and municipal governments was extremely important and would be addressed in the upcoming bill. The principle underpinning all Swedish legislation was that opposing interests must be taken into account when considering permit applications for different kinds of projects. Reindeer husbandry was recognized as one such opposing interest. The individual authority considering the application was responsible for taking opposing interests into account. In the case of permit applications for infrastructure projects, all private parties affected by the project must be consulted. In the case of permit applications for geographical surveys, all Sami villages affected by the survey must be consulted. Logging permits were required only for large areas. In such cases, the forest company or private landowner must consult the Sami village or villages concerned on the size of the area to be logged and the best way to take reindeer husbandry into account. Reindeer husbandry areas were divided into year-round breeding land and winter grazing land. Currently, there was no obligation to consult in the case of the latter.

65. The Sami Parliament, established in 1993, was both a Government agency and a popularly elected body. It was composed of 31 members elected by the Swedish Sami. Elections were held every four years; the next elections were due in May 2009. All Sami registered on the Sami Parliament voting list were eligible to vote.

66. The Sami Parliament's highest decision-making body was the Plenary Assembly. Since the Plenary Assembly met only a few times a year, a seven-member Board was responsible for handling day-to-day business and making any necessary decisions. The Sami Parliament's Secretariat, located in Kiruna (northern Sweden) but with local offices elsewhere, was responsible for organizing the Sami Parliament's day-to-day activities and preparing Board meetings.

67. The Sami Parliament was responsible, inter alia, for distributing State grants and other funding to the Sami, appointing the Sami school board, managing Sami language projects, participating in social planning, and monitoring compliance with Sami needs. Legislation adopted in 2006 had transferred a number of tasks relating to the administration of reindeer husbandry from the Swedish Board of Agriculture and the county administrative boards to the Sami Parliament. Today, the Sami Parliament was the central administrative authority for reindeer husbandry. The new system seemed to be working well.

68. **Ms. Kelt** (Sweden) said that detainees and prisoners enjoyed the same right to see a doctor as any other citizen did. Though the current system was generally considered adequate, much work was under way. There had been a number of serious incidents in recent years, particularly in remand prisons. The Prison and Probation Service had introduced a number of measures aimed at preventing prisoners from committing suicide and improving the medical attention and treatment they received. The Service had recently conducted an investigation into medical care at Sweden's 36 remand prisons. Its report, soon to be released, contained a number of suggestions aimed at better educating prison staff and improving the medical care available to prisoners. Though currently limited to remand prisons, the work would undoubtedly be extended to other prisons in due course.

69. **Ms. Ekman Alden** (Sweden) said that all Government agencies, including the police and the courts, were required to make their facilities and activities accessible to persons with disabilities. Support offered included sign-language interpreters, written information in special formats, and accessible environments for persons with difficulties in moving. She could not provide any statistics on the extent to which that requirement was met, but assured the Committee that such services were provided throughout Sweden. That said, a survey conducted in connection with the Convention on the Rights of Persons with Disabilities had found that more work was needed to ensure that all necessary support was provided and that persons with mental or intellectual impairments were also taken into account. The survey's

findings were currently being considered by the relevant authorities. Once the work was completed, the Government would have a clearer idea whether or not further action was needed.

70. **Ms. Tekin Befrits** (Sweden) said that the Living History Forum was the Government agency primarily responsible for raising schoolchildren's awareness about intolerance. The Forum's website contained several surveys, including in English, on Islamophobia, which some people considered a new form of intolerance. The Government's work on intolerance was not, however, confined to the Forum. In 2009 alone, it had provided almost SKr 11 million in funding to a slew of organizations that worked to combat racism and other forms of intolerance.

71. The Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages overlapped in many ways. Sweden had ratified both. Members seeking further information on Sweden's national minorities should consult Sweden's latest report on the Charter, submitted in 2007. In February 2009, the Swedish Government and the Council of Europe had organized a seminar to assess the protection of national minorities in Sweden with regard to the recommendations contained in the 2007 Opinion of the Advisory Committee on the Framework Convention. Participants had included municipalities and NGOs. In addition, a bill on national minorities to be presented later that month should ensure more effective implementation of both the Framework Convention and the Charter.

72. **Ms. Bratt** (Sweden) said that very strict rules governed the suspension of the enforcement of an expulsion order. Under the Aliens Act, if an international body that was competent to examine complaints from individuals requested the suspension of the enforcement of a refusal of entry or expulsion order, a stay of enforcement would be ordered unless there were exceptional grounds for not doing so. It was extremely rare for a stay of enforcement not to be ordered in such cases.

73. With regard to the disappearance of unaccompanied asylum-seeking Chinese children from the Swedish Migration Board's special units for such children, she said that the number of asylum-seeking Chinese children entering Sweden had dropped significantly in recent years. In 2008, there had been five. Two had been deemed to be adults; the three deemed to be children had disappeared. Thus far in 2009, there had been three. All of them had been deemed to be adults. Two had disappeared and one remained in Swedish reception facilities.

74. **Mr. Ehrenkrona** (Sweden) acknowledged the Committee's desire for Sweden to establish an independent authority responsible for examining complaints against police officers, but stressed that the Covenant contained no such obligation. It was for individual States to decide. Members seeking further information on the matter should consult the report of the Special Investigator appointed by the Government to analyse the system for investigating such complaints, which evaluated the various options in depth and explained how the conclusions contained in the report had been reached. While proper statistics on such complaints were hard to find, he could confirm that complaints against police officers were subjected to a preliminary investigation in exactly the same way as suspected crimes were. Needless to say, police officers from the same district as the officer against whom the complaint was being made were prohibited from taking part in that investigation.

75. **Ms. Kelt** (Sweden) said that complaints against police officers were handled by a special panel within the National Police Board. The panel, which was composed of the Director-General, members of the police force, two members of parliament and trade union representatives, was responsible for making decisions in cases of police misconduct. In 2005, the panel had received 104 cases and closed 109. In 2006, it had received 74 cases and closed 89. Of the cases closed in 2006, seven officers had been dismissed, seven had received a pay cut and 18 had been given a warning.

76. **Mr. Ehrenkrona** (Sweden) thanked the Committee for giving Sweden the opportunity to participate in its review, and proposed that in future the Committee should allocate two full days to the consideration of a State party's report, one for the introduction of the State party's report and members' questions, and the other for the delegation's replies.

77. **The Chairperson** said that the proposal had been noted and would be considered by the Bureau. He thanked the members of the delegation for their detailed responses and wished them a safe journey back to Sweden.

The meeting rose at 6.10 p.m.